

Bill No. CS for SB 900

Barcode 431364

CHAMBER ACTION

Senate

House

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The Committee on Community Affairs (Bennett) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. This act may be cited as the "Consumer Choice Act of 2006."

Section 2. Paragraphs (a) and (c) of subsection (2) of section 202.24, Florida Statutes, are amended to read:

202.24 Limitations on local taxes and fees imposed on dealers of communications services.--

(2)(a) Except as provided in paragraph (c), each public body is prohibited from:

1. Levying on or collecting from dealers or purchasers of communications services any tax, charge, fee, or other imposition on or with respect to the provision or purchase of communications services.

2. Requiring any dealer of communications services to enter into or extend the term of a franchise or other

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1 agreement that requires the payment of a tax, charge, fee, or
2 other imposition.

3 3. Adopting or enforcing any provision of any
4 ordinance or agreement to the extent that such provision
5 obligates a dealer of communications services to charge,
6 collect, or pay to the public body a tax, charge, fee, or
7 other imposition.

8
9 Municipalities and counties may not negotiate ~~Each~~
10 ~~municipality and county retains authority to negotiate all~~
11 ~~terms and conditions of a cable service franchise allowed by~~
12 ~~federal and state law except those~~ terms and conditions
13 related to franchise fees or ~~and~~ the definition of gross
14 revenues or other definitions or methodologies related to the
15 payment or assessment of franchise fees on providers of cable
16 services.

17 (c) This subsection does not apply to:

18 1. Local communications services taxes levied under
19 this chapter.

20 2. Ad valorem taxes levied pursuant to chapter 200.

21 3. Occupational license taxes levied under chapter
22 205.

23 4. "911" service charges levied under chapter 365.

24 5. Amounts charged for the rental or other use of
25 property owned by a public body which is not in the public
26 rights-of-way to a dealer of communications services for any
27 purpose, including, but not limited to, the placement or
28 attachment of equipment used in the provision of
29 communications services.

30 6. Permit fees of general applicability which are not
31 related to placing or maintaining facilities in or on public

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1 roads or rights-of-way.

2 7. Permit fees related to placing or maintaining
3 facilities in or on public roads or rights-of-way pursuant to
4 s. 337.401.

5 8. Any in-kind requirements, institutional networks,
6 or contributions for, or in support of, the use or
7 construction of public, educational, or governmental access
8 facilities allowed under federal law and imposed on providers
9 of cable service pursuant to any existing ordinance or an
10 existing franchise agreement granted by each municipality or
11 county, under which ordinance or franchise agreement service
12 is provided prior to July 1, 2006. Nothing in this
13 subparagraph shall prohibit the ability of providers of cable
14 service to recover such expenses as allowed under federal law.

15 9. Special assessments and impact fees.

16 10. Pole attachment fees that are charged by a local
17 government for attachments to utility poles owned by the local
18 government.

19 11. Utility service fees or other similar user fees
20 for utility services.

21 12. Any other generally applicable tax, fee, charge,
22 or imposition authorized by general law on July 1, 2000, which
23 is not specifically prohibited by this subsection or included
24 as a replaced revenue source in s. 202.20.

25 Section 3. Paragraphs (a), (e), and (f) of subsection
26 (3) of section 337.401, Florida Statutes, are amended to read:

27 337.401 Use of right-of-way for utilities subject to
28 regulation; permit; fees.--

29 (3)(a)~~1~~ Because of the unique circumstances
30 applicable to providers of communications services, including,
31 but not limited to, the circumstances described in paragraph

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1 (e) and the fact that federal and state law require the
2 nondiscriminatory treatment of providers of telecommunications
3 services, and because of the desire to promote competition
4 among providers of communications services, it is the intent
5 of the Legislature that municipalities and counties treat
6 providers of communications services in a nondiscriminatory
7 and competitively neutral manner when imposing rules or
8 regulations governing the placement or maintenance of
9 communications facilities in the public roads or
10 rights-of-way. Rules or regulations imposed by a municipality
11 or county relating to providers of communications services
12 placing or maintaining communications facilities in its roads
13 or rights-of-way must be generally applicable to all providers
14 of communications services and, notwithstanding any other law,
15 may not require a provider of communications services, ~~except~~
16 ~~as otherwise provided in subparagraph 2.,~~ to apply for or
17 enter into an individual license, franchise, or other
18 agreement with the municipality or county as a condition of
19 placing or maintaining communications facilities in its roads
20 or rights-of-way. In addition to other reasonable rules or
21 regulations that a municipality or county may adopt relating
22 to the placement or maintenance of communications facilities
23 in its roads or rights-of-way under this subsection, a
24 municipality or county may require a provider of
25 communications services that places or seeks to place
26 facilities in its roads or rights-of-way to register with the
27 municipality or county and to provide the name of the
28 registrant; the name, address, and telephone number of a
29 contact person for the registrant; the number of the
30 registrant's current certificate of authorization issued by
31 the Florida Public Service Commission, ~~or~~ the Federal

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1 Communications Commission, or the Florida Department of State;
2 and proof of insurance or self-insuring status adequate to
3 defend and cover claims.

4 ~~2. Notwithstanding the provisions of subparagraph 1.,~~
5 ~~a municipality or county may, as provided by 47 U.S.C. s. 541,~~
6 ~~award one or more franchises within its jurisdiction for the~~
7 ~~provision of cable service, and a provider of cable service~~
8 ~~shall not provide cable service without such franchise. Each~~
9 ~~municipality and county retains authority to negotiate all~~
10 ~~terms and conditions of a cable service franchise allowed by~~
11 ~~federal law and s. 166.046, except those terms and conditions~~
12 ~~related to franchise fees and the definition of gross revenues~~
13 ~~or other definitions or methodologies related to the payment~~
14 ~~or assessment of franchise fees and permit fees as provided in~~
15 ~~paragraph (c) on providers of cable services. A municipality~~
16 ~~or county may exercise its right to require from providers of~~
17 ~~cable service in-kind requirements, including, but not limited~~
18 ~~to, institutional networks, and contributions for, or in~~
19 ~~support of, the use or construction of public, educational, or~~
20 ~~governmental access facilities to the extent permitted by~~
21 ~~federal law. A provider of cable service may exercise its~~
22 ~~right to recover any such expenses associated with such~~
23 ~~in-kind requirements, to the extent permitted by federal law.~~

24 (e) The authority of municipalities and counties to
25 require franchise fees from providers of communications
26 services, with respect to the provision of communications
27 services, is specifically preempted by the state, ~~except as~~
28 ~~otherwise provided in subparagraph (a)2.,~~ because of unique
29 circumstances applicable to providers of communications
30 services when compared to other utilities occupying municipal
31 or county roads or rights-of-way. Providers of communications

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1 services may provide similar services in a manner that
 2 requires the placement of facilities in municipal or county
 3 roads or rights-of-way or in a manner that does not require
 4 the placement of facilities in such roads or rights-of-way.
 5 Although similar communications services may be provided by
 6 different means, the state desires to treat providers of
 7 communications services in a nondiscriminatory manner and to
 8 have the taxes, franchise fees, and other fees paid by
 9 providers of communications services be competitively neutral.
 10 Municipalities and counties retain all existing authority, if
 11 any, to collect franchise fees from users or occupants of
 12 municipal or county roads or rights-of-way other than
 13 providers of communications services, and the provisions of
 14 this subsection shall have no effect upon this authority. The
 15 provisions of this subsection do not restrict the authority,
 16 if any, of municipalities or counties or other governmental
 17 entities to receive reasonable rental fees based on fair
 18 market value for the use of public lands and buildings on
 19 property outside the public roads or rights-of-way for the
 20 placement of communications antennas and towers.

21 (f) Except as expressly allowed or authorized by
 22 general law and except for the rights-of-way permit fees
 23 subject to paragraph (c), a municipality or county may not
 24 levy on a provider of communications services a tax, fee, or
 25 other charge or imposition for operating as a provider of
 26 communications services within the jurisdiction of the
 27 municipality or county which is in any way related to using
 28 its roads or rights-of-way. A municipality or county may not
 29 require or solicit in-kind compensation, except as otherwise
 30 provided in s. 202.24(2)(c)8. or s. 610.109 ~~subparagraph (a)2.~~
 31 Nothing in this paragraph shall impair any ordinance or

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1 agreement in effect on May 22, 1998, or any voluntary
2 agreement entered into subsequent to that date, which provides
3 for or allows in-kind compensation by a telecommunications
4 company.

5 Section 4. Section 337.4061, Florida Statutes, is
6 amended to read:

7 337.4061 Definitions; unlawful use of state-maintained
8 road right-of-way by nonfranchised cable ~~television~~
9 services.--

10 (1) As used in this section, the term:

11 (a) "Cable service" means:

12 1. The one-way transmission to subscribers of video
13 programming or any other programming service; and

14 2. Subscriber interaction, if any, which is required
15 for the selection of such video programming or other
16 programming service.

17 (b) "Cable system" means a facility, consisting of a
18 set of closed transmission paths and associated signal
19 generation, reception, and control equipment that is designed
20 to provide cable service which includes video programming and
21 which is provided to multiple subscribers within a community,
22 but such term does not include:

23 1. A facility that serves only to retransmit the
24 television signals of one or more television broadcast
25 stations;

26 2. A facility that serves only subscribers in one or
27 more multiple-unit dwellings under common ownership, control,
28 or management, unless such facility or facilities use any
29 public right-of-way;

30 3. A facility that serves subscribers without using
31 any public right-of-way;

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1 ~~4.3.~~ A facility of a common carrier that is subject,
2 in whole or in part, to the provisions of 47 U.S.C. s. 201 et
3 seq., except the specific bandwidths or wavelengths used by
4 ~~that~~ such facility shall be considered a cable system only to
5 the extent such bandwidths or wavelengths are ~~facility is~~ used
6 in the transmission of video programming directly to
7 subscribers, unless the extent of such use is solely to
8 provide interactive on-demand services, in which case the use
9 of such bandwidths or wavelengths is not a cable system; or

10 ~~5.4.~~ Any facilities of any electric utility used
11 solely for operating its electric utility systems.

12 (c) "Franchise" means an initial authorization or
13 renewal thereof issued by a franchising authority, whether
14 such authorization is designated as a franchise, permit,
15 license, resolution, contract, certificate, agreement, or
16 otherwise, which authorizes the construction or operation of a
17 cable system.

18 (d) "Franchising authority" means any governmental
19 entity empowered by federal, state, or local law to grant a
20 franchise.

21 (e) "Person" means an individual, partnership,
22 association, joint stock company, trust, corporation, or
23 governmental entity.

24 (f) "Video programming" means programming provided by
25 or generally considered comparable to programming provided by
26 a television broadcast station or cable system.

27 (2) It is unlawful to use the right-of-way of any
28 state-maintained road, including appendages thereto, and also
29 including, but not limited to, rest areas, wayside parks,
30 boat-launching ramps, weigh stations, and scenic easements, to
31 provide for cable service over a cable system ~~purposes~~ within

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1 a geographic area subject to a valid existing franchise for
 2 cable service, unless the cable system using such right-of-way
 3 holds a franchise from a franchise authority ~~the municipality~~
 4 ~~or county~~ for the area in which the right-of-way is located.

5 (3) A violation of this section shall be deemed a
 6 violation of s. 337.406.

7 Section 5. Sections 610.102, 610.103, 610.104,
 8 610.105, 610.106, 610.107, 610.108, 610.109, 610.110, 610.112,
 9 610.113, 610.114, 610.115, and 610.116, Florida Statutes, are
 10 created to read:

11 610.102 Department of State authority to issue
 12 statewide cable franchise.--The department shall be designated
 13 as the franchising authority, pursuant to 47 U.S.C. s.
 14 522(10), for a state-issued franchise for the provision of
 15 cable service. A municipality or county may not grant a new
 16 franchise for the provision of cable service within its
 17 jurisdiction.

18 610.103 Definitions.--As used in ss. 610.102-610.114:

19 (1) "Cable service" means:

20 (a) The one-way transmission to subscribers of video
 21 programming or any other programming service.

22 (b) Subscriber interaction, if any, that is required
 23 for the selection of such video programming or other
 24 programming service.

25 (2) "Cable system" means a facility consisting of a
 26 set of closed transmission paths and associated signal
 27 generation, reception, and control equipment that is designed
 28 to provide cable service that includes video programming and
 29 that is provided to multiple subscribers within a community,
 30 but such term does not include:

31 (a) A facility that serves only to retransmit the

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1 television signals of one or more television broadcast
2 stations;

3 (b) A facility that serves only subscribers in one or
4 more multiple-unit dwellings under common ownership, control,
5 or management, unless such facility or facilities use any
6 public right-of-way;

7 (c) A facility that serves subscribers without using
8 any public right-of-way;

9 (d) A facility of a common carrier that is subject, in
10 whole or in part, to the provisions of 47 U.S.C. s. 201 et
11 seq., except the specific bandwidths or wavelengths over such
12 facility shall be considered a cable system only to the extent
13 such bandwidths or wavelengths are used in the transmission of
14 video programming directly to subscribers, unless the extent
15 of such use is solely to provide interactive on-demand
16 services, in which case it is not a cable system; or

17 (e) Any facilities of any electric utility used solely
18 for operating its electric utility systems.

19 (3) "Cable service provider" means a person that
20 provides cable service over a cable system.

21 (4) "Certificateholder" means a cable service provider
22 that has been issued and holds a certificate of franchise
23 authority from the department.

24 (5) "Department" means the Department of State.

25 (6) "Franchise" means an initial authorization or
26 renewal of an authorization, regardless of whether the
27 authorization is designated as a franchise, permit, license,
28 resolution, contract, certificate, agreement, or otherwise, to
29 construct and operate a cable system in the public
30 right-of-way.

31 (7) "Franchise authority" means any governmental

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1 entity empowered by federal, state, or local law to grant a
2 franchise.

3 (8) "Incumbent cable service provider" means the cable
4 service provider serving the largest number of cable
5 subscribers in a particular municipal or county franchise area
6 on July 1, 2006.

7 (9) "Public right-of-way" means the area on, below, or
8 above a public roadway, highway, street, sidewalk, alley, or
9 waterway, including, without limitation, a municipal, county,
10 state, district, or other public roadway, highway, street,
11 sidewalk, alley, or waterway.

12 (10) "Video programming" means programming provided
13 by, or generally considered comparable to programming provided
14 by, a television broadcast station as set forth in 47 U.S.C.
15 s. 522(20).

16 610.104 State authorization to provide cable
17 service.--

18 (1) An entity or person seeking to provide cable
19 service over a cable system in this state after July 1, 2006,
20 shall file an application for a state-issued certificate of
21 franchise authority with the department as required by this
22 section. An entity providing cable service under an unexpired
23 franchise agreement with a municipality or county as of July
24 1, 2006, is not subject to this subsection with respect to
25 such municipality or county until the franchise agreement
26 expires, except as provided by subsection (2) and s.
27 610.105(4). An entity providing cable service may seek
28 authorization from the department to provide service in areas
29 where the entity currently does not have an existing franchise
30 agreement as of July 1, 2006.

31 (2) Beginning 90 days after July 1, 2006, a cable

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1 service provider that is not an incumbent cable service
2 provider and provides cable service to less than 40 percent of
3 the total cable service subscribers in a particular franchise
4 area may elect to terminate an existing municipal or county
5 franchise and seek a state-issued certificate of franchise
6 authority by providing written notice to the Secretary of
7 State and the affected municipality or county not later than
8 180 days after July 1, 2006. The municipal or county franchise
9 is terminated on the date the department issues the
10 state-issued certificate of franchise authority.

11 (3) Before the 10th business day after an applicant
12 submits the affidavit, the department shall notify the
13 applicant for a state-issued certificate of franchise
14 authority whether the applicant's affidavit described by
15 subsection (4) is complete. If the department denies the
16 application, the department must specify with particularity
17 the reasons for the denial and permit the applicant to amend
18 the application to cure any deficiency. The department shall
19 act upon such amended application within 5 business days.

20 (4) The department shall issue a certificate of
21 franchise authority to offer cable service before the 15th
22 business day after receipt of a completed affidavit submitted
23 by an applicant and signed by an officer or general partner of
24 the applicant affirming:

25 (a) That the applicant has filed or will timely file
26 with the Federal Communications Commission all forms required
27 by that agency in advance of offering cable service in this
28 state.

29 (b) That the applicant agrees to comply with all
30 applicable federal and state laws and regulations, to the
31 extent that such state laws and rules are not in conflict with

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1 or superseded by the provisions of this chapter or other
2 applicable state law.

3 (c) That the applicant agrees to comply with all
4 lawful state laws and rules and municipal and county
5 ordinances and regulations regarding the placement and
6 maintenance of communications facilities in the public
7 right-of-way that are generally applicable to providers of
8 communications services in accordance with s. 337.401.

9 (d) A description of the service area for which the
10 applicant seeks certificate of franchise authority, which need
11 not be coextensive with municipal, county, or other political
12 boundaries.

13 (e) The location of the applicant's principal place of
14 business and the names of the applicant's principal executive
15 officers.

16 (5) If the department fails to act on the application
17 within 30 business days after receiving the application, the
18 application shall be denied. Prior to the expiration of the
19 30-day period, the applicant may request an automatic 30-day
20 extension or may proceed to the remedies set forth in
21 subsection (10).

22 (6) The certificate of franchise authority issued by
23 the department shall contain:

24 (a) A grant of authority to provide cable service over
25 a cable system as requested in the application.

26 (b) A grant of authority to construct, maintain, and
27 operate facilities through, upon, over, and under any public
28 right-of-way or waters.

29 (c) A statement that the grant of authority is subject
30 to lawful operation of the cable system to provide cable
31 service by the applicant or its successor in interest.

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1 (7) A certificateholder that seeks to include
 2 additional service areas in its current certificate shall file
 3 notice with the department that reflects the new service area
 4 or areas to be served.

5 (8) The certificate of franchise authority issued by
 6 the department is fully transferable to any successor in
 7 interest to the applicant to which the certificate is
 8 initially granted. A notice of transfer shall be filed with
 9 the department and the relevant municipality or county within
 10 14 business days following the completion of such transfer.

11 (9) The certificate of franchise authority issued by
 12 the department may be terminated by the cable service provider
 13 by submitting notice to the department.

14 (10) An applicant may challenge a denial of an
 15 application by the department in a court of competent
 16 jurisdiction through a petition for mandamus.

17 (11) The department shall adopt any procedural rules
 18 pursuant to ss. 120.536(1) and 120.54 necessary to implement
 19 this section.

20 (12) The department may establish a standard
 21 application form, in which case the application shall be on
 22 such form and must be accompanied by a fee established by the
 23 department, not to exceed \$10,000. In addition to the
 24 application fee, each certificateholder shall pay an annual
 25 fee established by the department and based on the number of
 26 the certificateholder's subscribers, not to exceed \$10,000.
 27 The fees shall be based on the costs incurred by the
 28 department in performing its duties under the provisions of
 29 ss. 610.102-610.115.

30 610.105 Eligibility for state-issued franchise.--

31 (1) Except as provided in s. 610.104(1) and (2) and

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1 subsection (4), a cable service provider that has an existing,
 2 unexpired franchise to provide cable service with respect to a
 3 municipality or county as of July 1, 2006, is not eligible to
 4 seek a state-issued certificate of franchise authority under
 5 this chapter as to that municipality or county until the
 6 expiration date of the existing franchise agreement.

7 (2) For purposes of this section, a cable service
 8 provider will be deemed to have or have had a franchise to
 9 provide cable service in a specific municipality or county if
 10 any affiliate or successor entity of the cable service
 11 provider has or had a franchise agreement granted by that
 12 specific municipality or county.

13 (3) The term "affiliate or successor entity" in this
 14 section refers to an entity receiving, obtaining, or operating
 15 under a franchise that directly or indirectly owns or
 16 controls, is owned or controlled by, or is under common
 17 ownership or control with the cable service provider.

18 (4) Notwithstanding subsection (1), a cable service
 19 provider may elect to terminate an existing municipal or
 20 county franchise and seek a state-issued certificate of
 21 franchise authority with respect to such municipality or
 22 county if another cable service provider is granted a
 23 state-issued certificate of franchise authority located in
 24 whole or in part within the service area covered by the
 25 existing municipal or county franchise. The cable service
 26 provider may terminate its existing franchise under this
 27 subsection by providing written notice to the Secretary of
 28 State and the affected municipality or county within 180 days
 29 following the issuance of the state-issued certificate of
 30 franchise authority to the nonincumbent cable service
 31 provider. The municipal or county franchise is terminated on

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1 the date the department issues the state-issued certificate of
2 franchise authority with respect to such municipality or
3 county to the cable service provider.

4 610.106 Franchise fee prohibited.--The department may
5 not impose any taxes, fees, charges, or other impositions on a
6 cable service provider as a condition for the issuance of a
7 state-issued certificate of franchise authority. No
8 municipality or county may impose any taxes, fees, charges, or
9 other exactions on certificateholders in connection with use
10 of public right-of-way as a condition of a certificateholder
11 doing business in the municipality or county, or otherwise,
12 except such taxes, fees, charges, or other exactions permitted
13 by chapter 202 and s. 337.401(6).

14 610.107 Buildout.--No franchising authority, state
15 agency, or political subdivision may impose any buildout
16 requirements on a certificateholder. However, each
17 certificateholder, if requested pursuant to a bona fide order
18 for cable service, shall make cable service available at each
19 building used for municipal or county purposes, including, but
20 not limited to, emergency operations centers, fire stations,
21 and public schools, within the area described in its
22 application under s. 610.104(4)(d) within 5 years after the
23 date of the issuance of its certificate by the department
24 using the technology of its choice.

25 610.108 Customer service standards.--

26 (1) An incumbent cable service provider shall comply
27 with customer service requirements reasonably comparable to
28 the standards in 47 C.F.R. s. 76.309(c) until there are two or
29 more providers offering service, excluding direct-to-home
30 satellite service, in the relevant service area.

31 (2) Beginning not later than July 1, 2009, for all

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1 providers of cable service in municipalities and counties
 2 that, as of January 1, 2006, have an office or department
 3 dedicated to responding to cable service quality complaints,
 4 all such complaints shall be handled by the Department of
 5 Agriculture and Consumer Services. Until that time, cable
 6 service quality complaints shall continue to be handled by the
 7 municipality or county. This provision shall not be construed
 8 to permit the municipality or county to impose customer
 9 service standards in conflict with this section.

10 (3) The Department of Agriculture and Consumer
 11 Services shall receive service quality complaints from
 12 customers of a certificateholder. The department shall address
 13 such complaints in an expeditious manner by assisting in the
 14 resolution of such complaint between the complainant and the
 15 certificateholder. The department shall adopt any procedural
 16 rules pursuant to ss. 120.536(1) and 120.54 necessary to
 17 implement this section.

18 610.109 Public, educational, and governmental access
 19 channels.--

20 (1) A certificateholder, not later than 180 days
 21 following a request by a municipality or county within whose
 22 jurisdiction the certificateholder is providing cable service,
 23 shall designate a sufficient amount of capacity on its network
 24 to allow the provision of public, educational, and
 25 governmental access channels for noncommercial programming as
 26 set forth in this section.

27 (2) A certificateholder shall designate a sufficient
 28 amount of capacity on its network to allow the provision of a
 29 comparable number of public, educational, and governmental
 30 access channels or capacity equivalent that a municipality or
 31 county has activated under the incumbent cable service

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1 provider's franchise agreement as of July 1, 2006. For the
 2 purposes of this section, a public, educational, or
 3 governmental channel is deemed activated if the channel is
 4 being used for public, educational, or governmental
 5 programming within the municipality for at least 10 hours per
 6 day. Except as provided in subsections (3)-(5), the
 7 certificateholder's obligations under this subsection continue
 8 regardless of whether the incumbent cable service provider,
 9 subsequent to July 1, 2006, becomes a certificateholder
 10 pursuant to this chapter.

11 (3) If a municipality or county did not have public,
 12 educational, or governmental access channels activated under
 13 the incumbent cable service provider's franchise agreement as
 14 of July 1, 2006, not later than 180 days following a request
 15 by the municipality or county within whose jurisdiction a
 16 certificateholder is providing cable service, the cable
 17 service provider shall furnish:

18 (a) Up to three public, educational, or governmental
 19 channels or capacity equivalent for a municipality or county
 20 with a population of at least 50,000.

21 (b) Up to two public, educational, or governmental
 22 channels or capacity equivalent for a municipality or county
 23 with a population of less than 50,000.

24 (4) Any public, educational, or governmental channel
 25 provided pursuant to this section that is not used by the
 26 municipality or county for at least 10 hours a day shall no
 27 longer be made available to the municipality or county but may
 28 be programmed at the cable service provider's discretion. At
 29 such time as the municipality or county can certify to the
 30 cable service provider a schedule for at least 10 hours of
 31 daily programming, the cable service provider shall restore

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1 the previously lost channel but shall be under no obligation
2 to carry that channel on a basic or analog tier.

3 (5) If a municipality or county has not used the
4 number of access channels or capacity equivalent permitted by
5 subsection (3), access to the additional channels or capacity
6 equivalent allowed in subsection (3) shall be provided upon
7 180 days' written notice if the municipality or county meets
8 the following standard: if a municipality or county has one
9 active public, educational, or governmental channel and wishes
10 to activate an additional public, educational, or governmental
11 channel, the initial channel shall be considered to be
12 substantially used when 12 hours are programmed on that
13 channel each calendar day. In addition, at least 40 percent of
14 the 12 hours of programming for each business day on average
15 over each calendar quarter must be nonrepeat programming.
16 Nonrepeat programming shall include the first three
17 videocastings of a program. If a municipality or county is
18 entitled to three public, educational, or governmental
19 channels under subsection (3) and has in service two active
20 public, educational, or governmental channels, each of the two
21 active channels shall be considered to be substantially used
22 when 12 hours are programmed on each channel each calendar day
23 and at least 50 percent of the 12 hours of programming for
24 each business day on average over each calendar quarter is
25 nonrepeat programming for three consecutive calendar quarters.

26 (6) The operation of any public, educational, or
27 governmental access channel or capacity equivalent provided
28 under this section shall be the responsibility of the
29 municipality or county receiving the benefit of such channel
30 or capacity equivalent, and a certificateholder bears only the
31 responsibility for the transmission of such channel content. A

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1 certificateholder shall be responsible for providing the
2 connectivity to each public, educational, or governmental
3 access channel distribution point up to the first 200 feet.

4 (7) The municipality or county shall ensure that all
5 transmissions, content, or programming to be transmitted over
6 a channel or facility by a certificateholder are provided or
7 submitted to the cable service provider in a manner or form
8 that is capable of being accepted and transmitted by a
9 provider without any requirement for additional alteration or
10 change in the content by the provider, over the particular
11 network of the cable service provider, which is compatible
12 with the technology or protocol utilized by the cable service
13 provider to deliver services. The provision of public,
14 educational, or governmental content to the provider
15 constitutes authorization for the provider to carry such
16 content, including, at the provider's option, authorization to
17 carry the content beyond the jurisdictional boundaries of the
18 municipality or county.

19 (8) Where technically feasible, a certificateholder
20 and an incumbent cable service provider shall use reasonable
21 efforts to interconnect their cable systems for the purpose of
22 providing public, educational, and governmental programming.
23 Interconnection may be accomplished by direct cable, microwave
24 link, satellite, or other reasonable method of connection.
25 Certificateholders and incumbent cable service providers shall
26 negotiate in good faith and incumbent cable service providers
27 may not withhold interconnection of public, educational, and
28 governmental channels.

29 (9) A certificateholder is not required to
30 interconnect for, or otherwise to transmit, public,
31 educational, and governmental content that is branded with the

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1 logo, name, or other identifying marks of another cable
 2 service provider, and a municipality or county may require a
 3 cable service provider to remove its logo, name, or other
 4 identifying marks from public, educational, and governmental
 5 content that is to be made available to another provider.

6 (10) A court of competent jurisdiction shall have
 7 exclusive jurisdiction to enforce any requirement under this
 8 section.

9 (11) In support of the capital costs incurred by the
 10 municipality or county in connection with the construction or
 11 operation of public, educational, or governmental access
 12 facilities and content provided by a municipality or county
 13 pursuant to this section, the certificateholder shall pay to
 14 the municipality or county 1 percent of the
 15 certificateholder's monthly revenues from the retail sale of
 16 cable services provided to customers located within the
 17 respective municipal or county boundaries, based upon the
 18 certificateholder's books and records, for a period of 2 years
 19 after the date the department issues a certificate to the
 20 certificateholder. After the expiration of the 2-year period,
 21 the certificateholder shall pay and the municipality or county
 22 shall continue to receive up to 1 percent of such revenues in
 23 support of the capital costs incurred by the municipality or
 24 county in connection with the construction or operation of
 25 public, educational, or governmental content provided by the
 26 municipality or county only if the governing body of the
 27 municipality or county affirmatively approves such continued
 28 payment. Upon such affirmative vote of approval, the
 29 certificateholder may recover from the customer its costs of
 30 the payment through a separately stated charge on the
 31 customer's bill. All payments made pursuant to this subsection

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1 shall be made in the same manner as, and treated as part of,
 2 the certificateholder's payment of communications services tax
 3 pursuant to s. 202.27, and all definitions, exemptions, and
 4 administrative provisions of chapter 202 shall apply to such
 5 payments.

6 610.110 Nondiscrimination by municipality or county.--

7 (1) A municipality or county shall allow a
 8 certificateholder to install, construct, and maintain a
 9 network within a public right-of-way and shall provide a
 10 certificateholder with open, comparable, nondiscriminatory,
 11 and competitively neutral access to the public right-of-way in
 12 accordance with the provisions of s. 337.401. All use of a
 13 public right-of-way by a certificateholder is nonexclusive.

14 (2) A municipality or county may not discriminate
 15 against a certificateholder regarding:

16 (a) The authorization or placement of a network in a
 17 public right-of-way;

18 (b) Access to a building or other property; or

19 (c) Utility pole attachment terms.

20 (3) Except as expressly provided in this section,
 21 nothing in this chapter shall be construed to limit or
 22 abrogate a municipality's or county's authority over the use
 23 of public rights-of-way under its jurisdiction, as provided in
 24 s. 337.401(3)(a).

25 610.112 Limitation on local authority.--

26 (1) A municipality or county may not impose additional
 27 requirements on a certificateholder, including, but not
 28 limited to, financial, operational, and administrative
 29 requirements, except as expressly permitted by this chapter. A
 30 municipality or county may not impose on activities of a
 31 certificateholder a requirement:

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1 (a) That particular business offices be located in the
2 municipality or county;

3 (b) Regarding the filing of reports and documents with
4 the municipality or county that are not required by state or
5 federal law and that are not related to the use of the public
6 right-of-way. Reports and documents other than schematics
7 indicating the location of facilities for a specific site that
8 are provided in the normal course of the municipality's or
9 county's permitting process, that are authorized by s. 337.401
10 for communications services providers, or that are otherwise
11 required in the normal course of such permitting process shall
12 not be considered related to the use of the public
13 right-of-way for communications services providers. A
14 municipality or county may not request information concerning
15 the capacity or technical configuration of a
16 certificateholder's facilities;

17 (c) For the inspection of a certificateholder's
18 business records; or

19 (d) For the approval of transfers of ownership or
20 control of a certificateholder's business, except a
21 municipality or county may require a certificateholder to
22 provide notice of a transfer within a reasonable time.

23 (2) Notwithstanding any other provision of law, a
24 municipality or county may require the issuance of a permit in
25 accordance with and subject to s. 337.401 to a
26 certificateholder that is placing and maintaining facilities
27 in or on a public right-of-way in the municipality or county.
28 In accordance with s. 337.402, the permit may require the
29 permitholder to be responsible, at the permitholder's expense,
30 for any damage resulting from the issuance of such permit and
31 for restoring the public right-of-way to a substantially

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1 similar condition to that of the public right-of-way before
 2 installation of such facilities. The terms of the permit shall
 3 be consistent with construction permits issued to other
 4 providers of communications services placing or maintaining
 5 communications facilities in a public right-of-way.

6 610.113 Discrimination prohibited.--

7 (1) The purpose of this section is to prevent
 8 discrimination among potential residential subscribers.

9 (2) Pursuant to 47 U.S.C. s. 541(a)(3), a
 10 certificateholder may not deny access to service to any group
 11 of potential residential subscribers because of the income of
 12 the residents in the local area in which such group resides.

13 (3) An affected person may seek enforcement of the
 14 requirements provided by subsection (2) by initiating a
 15 proceeding with the Department of Agriculture and Consumer
 16 Services pursuant to s. 570.544.

17 (4) For purposes of determining whether a
 18 certificateholder has violated subsection (2), cost, density,
 19 distance, and technological or commercial limitations shall be
 20 taken into account, and the certificateholder shall have a
 21 reasonable time to deploy service pursuant to 47 U.S.C. s.
 22 541(a)(4)(A). Use of an alternative technology that provides
 23 comparable content, service, and functionality may not be
 24 considered a violation of subsection (2). The inability to
 25 serve an end user because a certificateholder is prohibited
 26 from placing its own facilities in a building or property is
 27 not a violation of subsection (2). This section may not be
 28 construed to authorize any buildout requirements on a
 29 certificateholder.

30 (5) The Department of Agriculture and Consumer
 31 Services shall adopt any procedural rules pursuant to ss.

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1 120.536(1) and 120.54 necessary to implement this section.

2 610.114 Compliance.--If a certificateholder is found
3 by a court of competent jurisdiction to not comply with the
4 requirements of this chapter, the certificateholder shall have
5 a reasonable period of time, as specified by the court, to
6 cure such noncompliance.

7 610.115 Reports to the Legislature.--The Office of
8 Program Policy Analysis and Governmental Accountability shall
9 submit to the President of the Senate, the Speaker of the
10 House of Representatives, and the majority and minority
11 leaders of the Senate and House of Representatives, on
12 December 1, 2009, a report on the status of competition in the
13 cable service industry, including, by each municipality and
14 county, the number of cable service providers, the number of
15 cable subscribers served, the number of areas served by fewer
16 than two cable service providers, the trend in cable prices,
17 and the identification of any patterns of service as they
18 impact demographic and income groups.

19 610.116 Severability.--If any provision of ss.
20 610.102-610.115 or the application thereof to any person or
21 circumstance is held invalid, such invalidity shall not affect
22 other provisions or application of ss. 610.102-610.115 that
23 can be given effect without the invalid provision or
24 application, and to this end the provisions of ss.
25 610.102-610.115 are severable.

26 Section 6. Section 166.046, Florida Statutes, is
27 repealed.

28 Section 7. Paragraph (a) of subsection (3) of section
29 350.81, Florida Statutes, is amended to read:

30 350.81 Communications services offered by governmental
31 entities.--

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1 (3)(a) A governmental entity that provides a cable
2 service shall comply with the Cable Communications Policy Act
3 of 1984, 47 U.S.C. ss. 521 et seq., the regulations issued by
4 the Federal Communications Commission under the Cable
5 Communications Policy Act of 1984, 47 U.S.C. ss. 521 et seq.,
6 and all applicable state and federal rules and regulations,
7 including, but not limited to, ~~s. 166.046~~ and those provisions
8 of chapters 202, 212, ~~and 337~~, and 610 which apply to a
9 provider of the services.

10 Section 8. Section 364.0361, Florida Statutes, is
11 amended to read:

12 364.0361 Local government authority; nondiscriminatory
13 exercise.--A local government shall treat each
14 telecommunications company in a nondiscriminatory manner when
15 exercising its authority to grant franchises to a
16 telecommunications company or to otherwise establish
17 conditions or compensation for the use of rights-of-way or
18 other public property by a telecommunications company. A local
19 government may not directly or indirectly regulate the terms
20 and conditions, including, but not limited to, the operating
21 systems, qualifications, services, service quality, service
22 territory, and prices, applicable to or in connection with the
23 provision of any voice-over-Internet protocol, regardless of
24 the platform, provider, or protocol, broadband or information
25 service. This section does not relieve a provider from any
26 obligations under ~~s. 166.046~~ or s. 337.401.

27 Section 9. This act shall take effect July 1, 2006.

30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

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1 Delete everything before the enacting clause

2

3 and insert:

4 A bill to be entitled

5 An act relating to statewide cable television
6 franchises; providing a short title; amending
7 s. 202.24, F.S.; prohibiting counties and
8 municipalities from negotiating terms and
9 conditions relating to cable services; deleting
10 authorization to negotiate; revising
11 application to existing ordinances or franchise
12 agreements; amending s. 337.401, F.S.; deleting
13 authorization for counties and municipalities
14 to award cable service franchises and a
15 restriction that cable service companies not
16 operate without such a franchise; amending s.
17 337.4061, F.S.; revising definitions; creating
18 ss. 610.102, 610.103, 610.104, 610.105,
19 610.106, 610.107, 610.108, 610.109, 610.110,
20 610.112, 610.113, 610.114, 610.115, and
21 610.116, F.S.; designating the Department of
22 State as the authorizing authority; providing
23 definitions; requiring state authorization to
24 provide cable services; providing duties and
25 responsibilities of the Department of State;
26 providing application procedures and
27 requirements; providing for issuing
28 certificates of franchise authority; providing
29 eligibility requirements and criteria for a
30 certificate; authorizing the department to
31 adopt rules; providing for an application form;

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1 providing for fees; prohibiting the department
2 from imposing taxes, fees, or charges on a
3 cable service provider to issue a certificate;
4 prohibiting imposing buildout requirements on a
5 certificateholder; requiring certificateholders
6 to make cable service available at certain
7 public buildings under certain circumstances;
8 imposing certain customer service requirements
9 on cable service providers; requiring the
10 Department of Agriculture and Consumer Services
11 to receive customer service complaints;
12 requiring provision of public, educational, and
13 governmental access channels or capacity
14 equivalent; providing criteria, requirements,
15 and procedures; providing exceptions; providing
16 responsibilities of municipalities and counties
17 relating to such channels; providing for
18 enforcement; requiring certificateholders to
19 pay a portion of certain monthly revenues to
20 municipalities or counties for a certain period
21 of time; providing for continuing such payments
22 pursuant to local government approval;
23 authorizing continued payments to be itemized;
24 providing criteria for such payments; providing
25 requirements for and limitations on counties
26 and municipalities relating to access to public
27 right-of-way; prohibiting counties and
28 municipalities from imposing additional
29 requirements on certificateholders; authorizing
30 counties and municipalities to require permits
31 of certificateholders relating to public

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1 right-of-way; providing permit criteria and
2 requirements; prohibiting discrimination
3 between cable service subscribers; providing
4 for enforcement; providing for determinations
5 of violations; providing for enforcement of
6 compliance by certificateholders; requiring the
7 Office of Program Policy Analysis and
8 Government Accountability to report to the
9 Legislature on the status of competition in the
10 cable service industry; providing report
11 requirements; providing severability; repealing
12 s. 166.046, F.S., relating to definitions and
13 minimum standards for cable television
14 franchises imposed upon counties and
15 municipalities; amending ss. 350.81 and
16 364.0361, F.S.; removing cross-references to
17 conform; providing an effective date.

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